IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3195 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GSRTC

Versus

KANTILAL BALSHANKER PATEL

Appearance:

1. Special Civil Application No. 3195 of 2000

MR HARDIK C RAWAL for Petitioner No. 1

MR JS PATEL for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 14/03/2002

ORAL JUDGEMENT

#. Heard Mr.H.C.Rawal, learned advocate appearing on behalf of the petitioner Corporation and Mr.J.S. Patel, learned advocate for respondent workman.

#. The petitioner Corporation has challenged the order

passed by the Labour Court, Amreli in Recovery Application No.425 / 1989 dated 8th October, 1999, wherein the labour court has set aside the order dated 31st October, 1984 retiring the respondent workman at the age of 58 years and granted benefit of full backwages and other consequential benefits for a period of two years from 1st November, 1984 to 31st October, 1986. This Court has issued RULE and granted interim relief in terms of para-8[C] on 19th April, 2000. Thereafter, the matter is fixed for final hearing. Learned advocate Mr.H.C.Rawal on behalf of the petitioner Corporation has submitted that the Recovery Application has been filed by the respondent workman under Section 33[C][2] of the Industrial Disputes Act, 1947. It is further submitted that there was no pre existing right in favour of the respondent workman which required to be implemented by the petitioner Corporation. Mr.Rawal, learned advocate has also submitted that according to the respondent workman, he was employee of the private operator and thereafter, absorbed in the Corporation and therefore, according to the GSO and settlement, the respondent workman is entitled the retirement age upto 60 years instead of 58 years. On that basis, the respondent workman preferred Recovery Application challenging the order passed by the petitioner Corporation. However, there was no prior adjudication in respect of the order passed by the petitioner Corporation. Therefore, the labour court has no jurisdiction to set aside the order passed by the petitioner Corporation dated 31st October, 1984 retiring the respondent workman at the age of 58 years. He relied upon decision in similar case GUJARAT STATE ROAD TRANSPORT CORPORATION, VALSAD V. BHANABHAI B. PATEL, reported in 2000 [2] GLR 1358.

#. Learned advocate Mr.J.S.Patel appearing on behalf of the respondent has submitted that the respondent workman is entitled to benefit as per certain conditions of the petitioner Corporation that he was entitled to remain in service upto the age of 60 years because he was employee of the private operator and thereafter, he was absorbed in S.T. Corporation. It is also pointed out that said benefit of retirement age of 60 years has been extended to number of employees but said benefit is not given to the respondent workman and therefore, respondent workman has filed recovery application before the labour court, Amreli. According to the learned advocate Mr.J.S.Patel, the labour court has rightly examined the matter on merits and come to the conclusion that the respondent workman is entitled to benefit of 60 years retirement age and for that, order in question has been set aside and granted benefit of interim period to the respondent

workman. Therefore, Mr.Patel, learned advocate submits that the labour court has not committed any error and hence the present petition requires to be dismissed.

#. I have considered submissions made by the learned advocates for the parties. Before the labour court, recovery application was filed by the respondent workman vide Exh.1. According to the respondent workman, he was working as ATI in Savarkundala S.T.Depot and he retired on 31st October, 1984. According to the respondent workman, he was employee of the Private Operators Kundala Divisional Motor Vehicle Transport Mandali and since he was working with the private operator in Mandali and thereafter, the Corporation has absorbed the respondent workman on 1st October, 1962. Therefore, according to settlement and GSO of the petitioner Corporation, the respondent workman is entitled to age of retirement upto 60 years but the petitioner corporation has illegally retired the respondent workman at the age of 58 years. Therefore, the respondent workman is entitled to benefit of 60 years. The petitioner Corporation has filed reply vide Exh.7 and in the said reply, the petitioner Corporation has challenged the jurisdiction of the Court to examine the merits of the matter. The petitioner Corporation has also challenged that the the respondent workman has no any pre existing right and therefore, present application is required to be dismissed. The petitioner Corporation has also disputed that he was not absorbed from the private operator but on the contrary, it was case of the petitioner Corporation that he was appointed as fresh employee in the petitioner Corporation with effect from 1st October, 1962 and thus, he was not absorbed in the service of the petitioner corporation from private operator. The petitioner Corporation has also produced documents vide Exh.8, wherein Exh.8/1 is the division establishment order dated 29th August, 1962 and Exh.8/3 is the reply accepting certain conditions of service while appointing by the petitioner corporation which is a letter dated 1st October, 1971. These documents were exhibited as Exh.12, 13 and 14. The respondent workman was examined vide Exh.16 and the petitioner Corporation has not led any oral evidence before the labour court. After considering the evidence on record, the labour court has observed that the respondent workman was working with private operator and thereafter, he was taken into service of the petitioner Corporation and therefore the respondent workman is entitled to benefit of 60 years retirement age as per GSO. The labour court has observed that in appointment order dated 19th October, 1962 vide Exh.13, the respondent workman was appointed in the post of Traffic

Controller in the scale of Rs.52-110 with starting pay of Rs.52/- and in the said order, he was shown as an employee of the private operator. Therefore, the labour court has observed that since other employees of the Mandali have been absorbed by the petitioner Corporation and similar benefit has been given by the petitioner Corporation. Thereafter, the labour court has granted benefit in favour of the respondent workman while setting aside the order of retirement dated 31st October, 1984.

#. The question is whether the labour court has jurisdiction to go into merits of the mater to decide legality and validity of the retirement order. This question has been examined by this Court in reported decision in case of GUJARAT STATE ROAD TRANSPORT CORPORATION, VALSAD V. BHANABHAI B. PATEL, reported in 2002 GLR 1358, wherein identical question has been examined by this Court and this Court has made relevant observations in para-5, 6 and 7.

"5. After considering the submissions made from both the sides, according to my view, the law is quite settled that in a recovery proceedings, the labour Court has no power or authority to decide or adjudicate any dispute between the parties while exercising the powers under Sec. 33[C][2] of the I.D.Act. Before the Labour Court, the workman must prove pre-existing right for getting due amounts from the employer. After considering the award in question, the labour court has gone into the merits of the matter and has come tot he conclusion that the respondent is entitled to remain and continue in service of the petitioner Corporation upto the age of sixty years and, based on such conclusion, the labour court has set aside the order passed by the petitioner Corporation. Said exercise of the labour court is without jurisdiction and the same cannot be done by the labour court while exercising the powers under Sec.33[C][2] of the I.D.Act.

6. The law which has been decided by the Hon'ble Apex Court in case of Municipal Corporation of Delhi v. Ganesh Razak, reported in 1995 [1] LLJ 395 wherein it was held that this decision itself indicates that the power of labour court under Section 33[C][2] extends to interpretation of the award or settlement on which the workmen's right rests like executing

Court's power to interpret the decision for the purpose of execution where the basis of the claim is referable to the award or settlement but it does not extend to determine a dispute or entitlement or the basis of the claim, if, there be no prior adjudication or recognition of the same by the employer. In paragraph 12 of the said judgment, it has been further held that the labour court has no jurisdiction to first decide the entitlement of the workmen and then to proceed to compute the benefits so adjudicated on that basis in exercise of its powers under Section 33[C][2] of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and, thereafter, for the purpose of implementation, execution or enforcement thereof, the Labour Court has power under Section 33[C][2] like that of executing Court's power to interpret decree for the purpose of its execution. In course of such exercise, the Labour Court may interpret the basis of the claim made by the workman. However, it has no power or jurisdiction to consider and adjudicate whether the workman is entitled to such benefit. Similarly, recently, in case of Tara & Ors. v. Director, Social Welfare & Ors., reported in 1998 [2] LLJ 632, the case of Municipal Corporation, Delhi [supra] has been considered. Recently, this Court has also considered the case of Municipal Corporation, Delhi [supra] in the decision reported in 1998 [2] GLR 984 [Naranji Peraji Transport Co. v. Ramnikbhai B. Waghela].

7. In view of these facts, the view taken by the Labour Court in deciding the status of the respondent being an employee of private operator or not and whether he is entitled to remain in service upto the age of 60 years cannot be permitted under Section 33[C][2] of the Act and, therefore, according to my opinion, the Labour Court has erred in law in deciding the question and also in adjudicating the process while determining the question whether the respondent is entitled to the benefit of remaining in service upto the age of sixty years being an employee of the private transport operator. The Labour Court ought not to have adjudicated the entitled of the respondent in the proceedings under Section 33[C][2] of the Act and, therefore, the Labour Court has committed gross error which

is apparent on the face of the record calling for interference of this Court in exercise of the powers under Art.226 and / or 227 of the Constitution of India."

#. Considering observations made by this Court and looking to the identical facts of the present case, it is not necessary for this Court to decide or to give any opinion on merits of the matter as to whether the respondent workman was entitled to benefit of retirement age upto 60 years or not, otherwise, if the respondent workman intends to raise the dispute as to his legal right to continue in service upto 60 years will be adversely affected. Therefore, this Court is only inclined to examine the jurisdiction of the labour court on this aspect while exercising the powers under Section 33[C][2] of the Industrial Disputes Act, 1947 to decide the legality and validity of the order passed by the petitioner Corporation. But according to my opinion, the labour court has no jurisdiction to decide legality and validity of the order passed by the petitioner Corporation while exercising jurisdiction under Section 33[C][2]. The function of the labour court is like executing court, has to examine the whether the workman is having any pre-existing right or any amount legally due or admissible to the workman, otherwise, the labour court cannot decide the legality and validity of any order passed by the petitioner Corporation. Therefore, the directions issued by the labour court setting aside the order of retiring respondent workman at the age of 58 years dated 31st October, 1984 that itself, in view of this Court, beyond jurisdiction of the labour court and therefore, the labour court has committed jurisdictional error and procedural irregularity and therefore, interference of this Court is necessary. Therefore, the order passed by the labour court in Recovery Application No.425 / 1989 dated 8th October, 1999 requires to be quashed and set aside.

#. In the result, present petition is allowed. The order passed by the labour court in Recovery Application No.425 / 1989 dated 8th October, 1999 is hereby quashed and set aside.

#. However, it is observed that this Court has not examined the merits of the matter with respect the question whether the workman is entitled to benefit of retirement age of 60 years or not ? Therefore, this Court has not made any observation on this count, otherwise, the legal right of the respondent workman, if any, will be adversely affected. Therefore, it is open

to the respondent workman to raise industrial dispute challenging the dispute as raised in the recovery application claiming retirement age upto 60 years instead of 58 years under the machinery of the Industrial Disputes Act, 1947. In the event of raising such dispute, it is directed to the concerned authority to consider the same and to pass appropriate order in accordance with law at the earliest.

Rule is made absolute accordingly. No order as to costs. Direct Service is permitted to parties.

Date : 14-3-2002 [H.K.Rathod, J.]

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